

**86 - 1341**

No. \_\_\_\_\_

**In The**

**Supreme Court Of The United States**

Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOL, JR.  
CLERK

OCTOBER TERM, 1986

**CONNECTICUT PERFORMING ARTS  
FOUNDATION, INC.,**

*Petitioner,*

v.

**HONORABLE GEORGE F. BROWN,  
TAX COMMISSIONER FOR THE  
STATE OF CONNECTICUT,  
*Respondent.***

**BRIEF OF RESPONDENT IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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## **QUESTION PRESENTED**

Does the interpretation of a now defunct state statute in the federal judicial system solely as a result of the petitioner filing for bankruptcy present a substantial federal question to be reviewed by this Court?

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## STATEMENT OF THE CASE

Petitioner, Connecticut Performing Arts Foundation, Inc., (hereinafter "CPAF"), is a non-stock Connecticut corporation which operated a large summer theater. On September 29, 1971, the then Connecticut tax commissioner, George Brown, conducted a hearing on the application of CPAF for exemption from the Connecticut admissions tax under section 12-553 of the Connecticut General Statutes. The exemption provision of the tax as well as the imposition provision, contained in section 12-541 of the Connecticut General Statutes, allowed exemptions to those organizations "of a similar nature" to those eligible for an exemption under title 26, section 501 of the Internal Revenue Code (hereinafter "IRC"). At a hearing held on April 27, 1971, the tax commissioner granted CPAF an exemption under § 12-541 of the Connecticut General Statutes based upon the representation made by CPAF that it had qualified as an exempt organization under § 501 of the IRC.

On January 25, 1974, the tax commissioner advised CPAF that its exemption was withdrawn because a "subsequent investigation by the department revealed that the organization was denied an exemption from federal income tax on March 9, 1962. . . ." After a hearing conducted on June 26, 1974, the tax commissioner ruled on December 11, 1974, that the exemption was properly revoked because of the new information regarding the March 9, 1962 denial by the Internal Revenue Service (hereinafter "IRS") of CPAF's application for a federal income tax exemption. CPAF appealed this determination of the tax commissioner to the Connecticut Court of Common Pleas (now merged into the Superior Court) on January 5, 1975. The case was later removed to the Bankruptcy Court in November, 1982 after CPAF filed a petition for reorganization pursuant to chapter 11 of the Bankruptcy Code. The case came to trial before the Bankruptcy Court, and judgment for CPAF was entered on March 24, 1983.

The tax commissioner appealed the decision of the Bankruptcy Court to the United States District Court. Pursuant to that appeal the Court, Burns, J., reversed the decision of the Bankruptcy Court holding, that the tax commissioner was correct in revoking CPAF's exemption.

CPAF appealed the decision of the District Court to the United States Court of Appeals for the Second Circuit. That Court affirmed the judgment of the District Court. It should be noted that section 12-541 of the Connecticut General Statutes has been amended so that the issue of statutory construction before these two appellate courts will never recur.

Thereafter, CPAF filed a Petition For Rehearing and/or Rehearing en banc, which petition was denied by the Second Circuit Court of Appeals on November 12, 1986.

CPAF now seeks review by this Court by Petition for Writ of Certiorari.

## **REASONS FOR DENYING THE PETITION**

### **A. There Is No Substantial Federal Question.**

This petition is not one which requires the exercise of this Court's extraordinary and discretionary jurisdiction. A review by this Court would involve applying established and familiar principles of statutory construction to a state law. The decisions below gave full consideration to the issues and decided them correctly, and nothing has been shown by petitioner to warrant a reexamination of settled principles.

The issue before the lower courts was one of pure statutory construction. Section 12-541(b)(2) of the Connecticut General Statutes allowed the tax commissioner, "in the absence of a ruling by the Internal Revenue Service . . .," to grant an exemption to an organization of a "similar nature" to one exempt from taxation under the IRC. The State of Connecticut argued that because CPAF had been denied an exemption by the IRS, the commissioner was simply without authority under § 12-541(b)(2) to have granted an exemption. When the tax commissioner learned of the IRS denial, he acted in compliance with the law in revoking the exemption as being without effect. In light of the IRS ruling, the tax commissioner was without initial authority to grant an exemption. CPAF argued that the statute should be interpreted to mean that the tax commissioner is not precluded from granting an exemption based on any IRS ruling. CPAF argued that although it was denied an IRS exemption under § 501(c)(4), it would not be precluded from obtaining an exemption based on its similarity to a § 501(c)(3) organization. Therefore, the issue before the lower courts was one limited to interpreting the meaning of § 12-541 of the Connecticut General Statutes.

The basic holding by both appellate courts can only be characterized as construing a Connecticut tax statute, a pure question of law. Petitioner's characterization of the decisions of both appellate courts as a finding of fact is blatantly

improper. Since the gravamen of the Petition to this Court is that the appellate courts made improper findings of fact when the basic issue was one of a question of law, the petitioner has absolutely no basis for asking this Court to exercise its exceptional jurisdiction in this case. Of course, even if petitioner's characterization of the issue as one of fact is true, this only substantiates respondent's position that there is no substantial federal question.

The federal appellate review by the District Court and the Court of Appeals was correct. This case is devoid of any federal question, and it is only by the fortuitous event of the petitioner having filed for reorganization under the bankruptcy code that this case of the construction of a state statute is in the federal system at all.

**B. The Issues Presented Are Not Sufficiently Important To Warrant This Court's Attention.**

The only real question CPAF raised in its petition turns on the particular facts of this case alone and is of interest only to the parties to it. The statute in question has been radically amended so that the tax commissioner no longer has discretion to grant an exemption. Now a corporation is entitled to state exemption from the admission tax only if the corporation has been exempted by the IRS. (See App. p. 1A). Clearly, the issue is devoid of any national importance and is too narrow to warrant review. It is noteworthy that even the Connecticut Supreme Court, when given the opportunity by the Court of Appeals for the Second Circuit under the Uniform Certification of Questions of Law Act, 1985 Conn. Pub. Acts 85-111, declined to hear this issue. (See *Connecticut Performing Arts Foundation, Inc. v. Brown*, 801 F.2d 566 (2d Cir.) (1986)).

However, Petitioner asks this Court to make yet another review of the lengthy record to see if it can reverse what two courts have accurately found. In the instant case, petitioner raises questions resolved twice in favor of respondent on appeal and without any impact outside the limits of this case.

Since petitioner has no legitimate federal question and the issues presented are not sufficiently important to warrant review, this Court is urged to deny petitioner's request for a writ of certiorari.

## **CONCLUSION**

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

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## **APPENDIX**

Section 12-541 of the Connecticut General Statutes as revised in 1982 provides as follows:

**Sec. 12-541. Admissions tax. Nature of tax. Exemptions.** There is hereby imposed a tax of ten per cent of the admission charge to any place of amusement, entertainment or recreation, except that no tax shall be imposed with respect to any admission charge (1) when the admission charge is less than one dollar, (2) when a daily admission charge is imposed which entitles the patron to participate in an athletic or sporting activity, (3) to any event, all of the proceeds from which inure exclusively to an entity which is exempt from federal income tax under the Internal Revenue Code, provided such entity actively engages in and assumes the financial risk associated with the presentation of such event, (4) to any event which in the opinion of the commissioner, is conducted primarily to raise funds for an entity which is exempt from federal income tax under the Internal Revenue Code, provided the commissioner is satisfied that the net profit which inures to such entity from such event will exceed the amount of the admissions tax which, but for this subdivision, would be imposed upon the person making such charge to such event, (5) to any event at the Hartford Civic Center or the New Haven Coliseum or (6) paid by centers of service for elderly persons, as described in subdivision (d) of section 17-137c. The tax shall be imposed upon the person making such charge and reimbursement for the tax shall be collected by such person from the purchaser. Such reimbursement, termed "tax", shall be paid by the purchaser to the person making the admission charge. Such tax, when added to the admission charge, shall be a debt from the purchaser to the person making the admission charge and shall be recoverable at law.